

APPEAL NO. 031681  
FILED AUGUST 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 5, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appeals on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

**GOOD FAITH EFFORT**

The hearing officer did not err in determining that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the sixth quarter qualifying period. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)) establish the requirements for entitlement to SIBs. At issue was whether the claimant had a total inability to work during the qualifying period, pursuant to Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant appears to assert on appeal that she is entitled to sixth quarter SIBs, under Rule 130.102(d)(2) and (5), because she looked for work and participated in a vocational rehabilitation program with the Texas Rehabilitation Commission during the qualifying period. We note that the claimant did not make this argument at the hearing, and evidence was not developed to establish entitlement on these bases. Accordingly, we affirm the hearing officer's good faith determination.

**DIRECT RESULT**

The hearing officer erred in determining that the claimant's unemployment was not a direct result of her impairment from the compensable injury. We have said that "direct result" may be established by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. The hearing officer found, in Finding of Fact No. 4,

that the claimant “continued to suffer lasting effects of the compensable injury that rendered her unable to return to her preinjury employment.” The hearing officer’s ultimate determination that the claimant’s unemployment is not a direct result of the impairment from the compensable injury, therefore, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Accordingly, we reverse the hearing officer’s “direct result” determination and render a decision that the claimant’s unemployment was a direct result of her impairment from the compensable injury.

The hearing officer’s “direct result” determination is reversed and rendered. Since the claimant failed to satisfy the “good faith” criterion, however, the hearing officer’s decision and order that the claimant is not entitled to sixth quarter SIBs is affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge